

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

DAMETRICE BARNES,

Plaintiff,

v.

SETH CHANDLER, et al.,

Defendants.

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No. 1:25-cv-00012-PLC

MEMORANDUM AND ORDER

This matter is before the Court upon review of Missouri prisoner Dametrice Barnes’s Application to Proceed in District Court Without Prepaying Fees or Costs. (ECF No. 2). A litigant seeking leave to proceed without prepaying the filing fee is required to file an affidavit stating his assets, his inability to pay, and the nature of the action. 28 U.S.C. § 1915(a)(1). If the litigant is a prisoner he must also file a “certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint . . . obtained from the appropriate official of each prison at which the prisoner is or was confined.” 28 U.S.C. § 1915(a)(2). The district court must use that account statement to calculate the initial partial filing fee the prisoner must pay, and then “assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee” of twenty percent of whichever amount is greater, the average monthly deposits or the average monthly balance. *See* 28 U.S.C. § 1915(b)(1)(A)–(B).

Plaintiff has filed the required affidavit, but he failed to file a certified copy of his account statement—or institutional equivalent—as required by section 1915(a)(2). As courts consistently note, Congress wrote section 1915 in mandatory terms. *See, e.g., Samarripa v. Ormond*, 917 F.3d

515, 521 (6th Cir. 2019); *Edwards v. Neb. Dep't of Corr.*, 8:23-cv-0002- JFB, 2023 WL 2186984, at *1 (D. Neb. Feb. 23, 2023); *Aikens v. Osorio*, 3:22-cv-00312- MR, 2022 WL 3590349, at *1 (W.D.N.C. Aug. 22, 2022); *Ortega v. Phaneof*, 1:19-cv-00893-JB, 2020 WL 4529334, at *1 (D.N.M. Apr. 8, 2020). Based on the plain text of § 1915, without Plaintiff's account statement, the Court cannot grant his Application. *See* 28 U.S.C. § 1915(a)(2), (b)(1).

The Court will deny Plaintiff's Application without prejudice. The Court grants Plaintiff 21 days to either pay the \$405 filing fee in its entirety or file an application that complies with all of section 1915(a)'s requirements. If Plaintiff files an application in full compliance with § 1915(a) and the Court grants it, the Court will assess an initial partial filing fee and order Plaintiff to pay it.

Plaintiff has also filed a motion seeking the appointment of counsel. (ECF No. 3). "A pro se litigant has no statutory or constitutional right to have counsel appointed in a civil case." *Stevens v. Redwing*, 146 F.3d 538, 546 (8th Cir. 1998). When determining whether to appoint counsel for an indigent litigant, the Court considers factors such as the complexity of the case, the ability of the *pro se* litigant to investigate the facts, the existence of conflicting testimony, and the ability of the *pro se* litigant to present his claims. *Id.* After considering the relevant factors, the Court finds that the appointment of counsel is unwarranted. However, recognizing that circumstances may change, the Court will deny Plaintiff's motion without prejudice, and will entertain future motions for the appointment of counsel, if appropriate.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (ECF No. 2) is **DENIED** without prejudice.

IT IS FURTHER ORDERED that Plaintiff's motion for the appointment of counsel (ECF No. 3) is **DENIED** without prejudice.

IT IS FURTHER ORDERED that, within 21 days of the date of this Memorandum and Order, Plaintiff shall either pay the \$405 filing fee in full or file a fully completed Application to Proceed in District Court Without Prepaying Fees or Costs that is accompanied by a certified copy of the trust fund account statement (or institutional equivalent) for the 6-month period immediately preceding the filing of the complaint.

IT IS FURTHER ORDERED that the Clerk of Court shall send Plaintiff a copy of the Court's form Application to Proceed in District Court Without Prepaying Fees or Costs.



PATRICIA L. COHEN
UNITED STATES MAGISTRATE JUDGE

Dated this 29th day of January, 2025